

Message

From: MacCuish, Logan [LMacCuish@KSLAW.com]
Sent: 7/3/2019 8:34:07 PM
To: Kiyota, Diane@ARB [diane.kiyota@arb.ca.gov]; Rosenbaeck, Matthias [Matthias.Rosenbaeck@vw.com]
CC: Sauers, William [WSauers@KSLAW.com]; Min, Leah [LMin@KSLAW.com]; McKay, Lynn [Lynn.McKay@vw.com]; Murtagh, Michael P. [murtaghm@sullcrom.com]; Sutschek, Rob [Rob.Sutschek@vw.com]; McReynolds, Gregory [Gregory.McReynolds@vw.com]; D'Ambrosi, Tony [Tony.DAmbrosi@vw.com]; Judith Fiorentini [Judith.Fiorentini@doj.ca.gov] [Judith.Fiorentini@doj.ca.gov]; Jon.Worm@doj.ca.gov; Laurel Carnes [Laurel.Carnes@doj.ca.gov] [Laurel.Carnes@doj.ca.gov]; Anna.E.Grace@usdoj.gov; Kaul, Meetu [Kaul.Meetu@epa.gov]; Orehowsky, Gregory [Orehowsky.Gregory@epa.gov]; Snyder, Jim [Snyder.Jim@epa.gov]; Wehrly, Linc [wehrly.linc@epa.gov]; Cicero-Fernandez, Pablo@ARB [Pablo.Cicero@arb.ca.gov]; Lemieux, Sharon@ARB [sharon.lemieux@arb.ca.gov]; Nadolsky, Judy [Judy.Nadolsky@VW.com]; Lang, Robin@ARB [Robin.Lang@arb.ca.gov]; Ball, Joel [ball.joel@epa.gov]
Subject: RE: IUVP-TDI_2.0L_Gen.1_Updated vehicle list for 2nd vehicle_CY2019
Attachments: 2019_IUVP_TDI_2009 2.0L Gen.1_Updated vehicle list.xlsx

Diane,

As we discussed, we wanted to clarify the request.

Using the criteria provided by EPA/CARB for procuring and testing 2.0 liter Gen 1 vehicles, VW was able to procure 1 vehicle for in-use testing. However, VW has been unable to procure a second 2.0 liter Gen 1 vehicle and it must procure and test an additional vehicle before the October 1, 2019 deadline.

VW therefore respectfully requests that ARB and EPA allow VW to expand the list of potential test vehicles. With your permission, we would seek to procure and test a vehicle from this list to fulfill the in-use testing requirement under the First Partial Consent Decree. The attached list contains two tabs. Tab 1 has the updated proposed list of vehicles that VW would seek to procure. For comparison, Tab 2 contains the prior list from which we procured 1 vehicle.

This is a separate topic from the 3.0 liter Gen 1.1 vehicles, which we separately discussed with you, EPA, DOJ, and CAAG several weeks ago and which we will continue to discuss separately.

Please let us know if the updated list of 2.0 liter Gen 1 vehicles in Tab 1 of the attached document is an acceptable to you.

Thanks, and wishing everyone a Happy Fourth of July!
Logan

Logan MacCuish

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Los Angeles, CA 90071

KING & SPALDING

From: Kiyota, Diane@ARB <diane.kiyota@arb.ca.gov>
Sent: Tuesday, June 25, 2019 10:14 AM

ED_005005_00000711-00001

To: Rosenbaeck, Matthias <Matthias.Rosenbaeck@vw.com>

Cc: Sauers, William <WSauers@KSLAW.com>; Min, Leah <LMin@KSLAW.com>; MacCuish, Logan <LMacCuish@KSLAW.com>; McKay, Lynn <Lynn.McKay@vw.com>; Murtagh, Michael P. <murtaghm@sullcrom.com>; Sutschek, Rob <Rob.Sutschek@vw.com>; McReynolds, Gregory <Gregory.McReynolds@vw.com>; D'Ambrosi, Tony <Tony.DAmbrosi@vw.com>; Judith Fiorentini (Judith.Fiorentini@doj.ca.gov) <Judith.Fiorentini@doj.ca.gov>; Jon.Worm@doj.ca.gov; Laurel Carnes (Laurel.Carnes@doj.ca.gov) <Laurel.Carnes@doj.ca.gov>; Anna.E.Grace@usdoj.gov; Kaul, Meetu (Kaul.Meetu@epa.gov) <Kaul.Meetu@epa.gov>; Orehowsky.Gregory@epa.gov; snyder.jim@epa.gov; wehrly.linc@epa.gov; Cicero-Fernandez, Pablo@ARB <Pablo.Cicero@arb.ca.gov>; Lemieux, Sharon@ARB <sharon.lemieux@arb.ca.gov>; Nadolsky, Judy <Judy.Nadolsky@VW.com>; Lang, Robin@ARB <Robin.Lang@arb.ca.gov>; Ball, Joel <ball.joel@epa.gov>

Subject: RE: IUVP-TDI_2.0L_Gen.1_Updated vehicle list for 2nd vehicle_CY2019

Matthias,

There are several issues that the attorneys for VW, DOJ, CAAG, EPA, and CARB are addressing, and until those issues are resolved, I suggest that you not move forward on this.

Let me know if you have any questions.

Regards,
Diane

From: Rosenbaeck, Matthias <Matthias.Rosenbaeck@vw.com>

Sent: Friday, June 21, 2019 11:21 AM

To: Kiyota, Diane@ARB <diane.kiyota@arb.ca.gov>

Cc: Sauers, William <WSauers@kslaw.com>; Min, Leah <LMin@kslaw.com>; MacCuish, Logan <LMacCuish@kslaw.com>; McKay, Lynn <Lynn.McKay@vw.com>; Murtagh, Michael P. <murtaghm@sullcrom.com>; Sutschek, Rob <Rob.Sutschek@vw.com>; McReynolds, Gregory <Gregory.McReynolds@vw.com>; D'Ambrosi, Tony <Tony.DAmbrosi@vw.com>; Judith Fiorentini (Judith.Fiorentini@doj.ca.gov) <Judith.Fiorentini@doj.ca.gov>; Jon.Worm@doj.ca.gov; Laurel Carnes (Laurel.Carnes@doj.ca.gov) <Laurel.Carnes@doj.ca.gov>; Anna.E.Grace@usdoj.gov; Kaul, Meetu (Kaul.Meetu@epa.gov) <Kaul.Meetu@epa.gov>; Orehowsky.Gregory@epa.gov; snyder.jim@epa.gov; wehrly.linc@epa.gov; Cicero-Fernandez, Pablo@ARB <Pablo.Cicero@arb.ca.gov>; Lemieux, Sharon@ARB <sharon.lemieux@arb.ca.gov>; Nadolsky, Judy <Judy.Nadolsky@VW.com>; Lang, Robin@ARB <Robin.Lang@arb.ca.gov>; Ball, Joel <ball.joel@epa.gov>

Subject: Re: IUVP-TDI_2.0L_Gen.1_Updated vehicle list for 2nd vehicle_CY2019

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Diane -

this is a list for the 2.0L TDI Gen.1.

The previous list was only successful for 1x vehicle. The updated list is to find the 2nd vehicle.

The previous list shows the reasons, why only one vehicle was tested. E.g. No response, above mileage,...

Matthias Rosenbäck

On Jun 21, 2019, at 14:07, Kiyota, Diane@ARB <diane.kiyota@arb.ca.gov> wrote:

Matthias,

For clarification, is your request for VW to identify and substitute a single vehicle for the vehicle(s) that failed IUVP testing in April/May 2019?

Regards,
Diane

From: Rosenbaeck, Matthias <Matthias.Rosenbaeck@vw.com>

Sent: Thursday, June 20, 2019 10:33 AM

To: Kiyota, Diane@ARB <diane.kiyota@arb.ca.gov>

Cc: Sauers, William <WSauers@KSLAW.com>; Min, Leah <LMin@KSLAW.com>; MacCuish, Logan <LMacCuish@KSLAW.com>; McKay, Lynn <Lynn.McKay@vw.com>; Murtagh, Michael P. <murtaghm@sullcrom.com>; Sutschek, Rob <Rob.Sutschek@vw.com>; McReynolds, Gregory <Gregory.McReynolds@vw.com>; D'Ambrosi, Tony <Tony.DAmbrosi@vw.com>; Judith Fiorentini (Judith.Fiorentini@doj.ca.gov) <Judith.Fiorentini@doj.ca.gov>; Jon.Worm@doj.ca.gov; Laurel Carnes (Laurel.Carnes@doj.ca.gov) <Laurel.Carnes@doj.ca.gov>; Anna.E.Grace@usdoj.gov; Kaul, Meetu (Kaul.Meetu@epa.gov) <Kaul.Meetu@epa.gov>; Orehowsky.Gregory@epa.gov; snyder.jim@epa.gov; wehrly.linc@epa.gov; Cicero-Fernandez, Pablo@ARB <Pablo.Cicero@arb.ca.gov>; Lemieux, Sharon@ARB <sharon.lemieux@arb.ca.gov>; Nadolsky, Judy <Judy.Nadolsky@VW.com>; Cicero-Fernandez, Pablo@ARB <Pablo.Cicero@arb.ca.gov>; Lang, Robin@ARB <Robin.Lang@arb.ca.gov>; Ball, Joel <ball.joel@epa.gov>

Subject: IUVP-TDI_2.0L_Gen.1_Updated vehicle list for 2nd vehicle_CY2019

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Diane –

for the 2.0L TDI Gen.1 we would like you to review the updated vehicle list for procuring the 2nd vehicle. The attachment includes two tabs one with the previous approved (Approved Gen 1 2.0L List) and the updated list (Proposed Gen 1 vehicles).

Out of the approved list, it was the only positive response tested, which met the requirements. Please let us know, if we can proceed with the updated list.

Thanks,
Matthias

From: Kiyota, Diane@ARB <diane.kiyota@arb.ca.gov>

Sent: Tuesday, March 5, 2019 6:42 PM

To: Rosenbaeck, Matthias <Matthias.Rosenbaeck@vw.com>

Cc: Sauers, William <WSauers@KSLAW.com>; Min, Leah <LMin@KSLAW.com>; MacCuish, Logan <LMacCuish@KSLAW.com>; McKay, Lynn <Lynn.McKay@vw.com>; Murtagh, Michael P. <murtaghm@sullcrom.com>; Sutschek, Rob <Rob.Sutschek@vw.com>; McReynolds, Gregory <Gregory.McReynolds@vw.com>; D'Ambrosi, Tony <Tony.DAmbrosi@vw.com>; Judith Fiorentini (Judith.Fiorentini@doj.ca.gov) <Judith.Fiorentini@doj.ca.gov>; Jon.Worm@doj.ca.gov; Laurel Carnes (Laurel.Carnes@doj.ca.gov) <Laurel.Carnes@doj.ca.gov>; Anna.E.Grace@usdoj.gov; Kaul, Meetu (Kaul.Meetu@epa.gov) <Kaul.Meetu@epa.gov>; Orehowsky.Gregory@epa.gov; snyder.jim@epa.gov; wehrly.linc@epa.gov; Cicero-Fernandez, Pablo@ARB <Pablo.Cicero@arb.ca.gov>; Lemieux, Sharon@ARB <sharon.lemieux@arb.ca.gov>; Nadolsky, Judy <Judy.Nadolsky@VW.com>; Cicero-

Fernandez, Pablo@ARB <Pablo.Cicero@arb.ca.gov>; Lang, Robin@ARB <Robin.Lang@arb.ca.gov>
Subject: RE: IUVP-TDI_2.0L and 3.0L_Vehicle List CY2019

Matthias,

Your proposed list of vehicles is acceptable to the agencies. Let me know if you have any problems procuring these vehicles or if you have any questions.

Regards,
Diane

From: Rosenbaeck, Matthias <Matthias.Rosenbaeck@vw.com>
Sent: Tuesday, February 26, 2019 10:26 AM
To: Kiyota, Diane@ARB <diane.kiyota@arb.ca.gov>
Cc: Sauers, William <WSauers@KSLAW.com>; Min, Leah <LMin@KSLAW.com>; MacCuish, Logan <LMacCuish@KSLAW.com>; McKay, Lynn <Lynn.McKay@vw.com>; Murtagh, Michael P. <murtaghm@sullcrom.com>; Sutschek, Rob <Rob.Sutschek@vw.com>; McReynolds, Gregory <Gregory.McReynolds@vw.com>; D'Ambrosi, Tony <Tony.DAmbrosi@vw.com>; Judith Fiorentini <Judith.Fiorentini@doj.ca.gov> <Judith.Fiorentini@doj.ca.gov>; Jon.Worm@doj.ca.gov; Laurel Carnes <Laurel.Carnes@doj.ca.gov> <Laurel.Carnes@doj.ca.gov>; Anna.E.Grace@usdoj.gov; Kaul, Meetu <Kaul.Meetu@epa.gov> <Kaul.Meetu@epa.gov>; Orehowsky.Gregory@epa.gov; snyder.jim@epa.gov; wehrly.linc@epa.gov; Cicero-Fernandez, Pablo@ARB <Pablo.Cicero@arb.ca.gov>; Lemieux, Sharon@ARB <sharon.lemieux@arb.ca.gov>; Nadolsky, Judy <Judy.Nadolsky@VW.com>
Subject: IUVP-TDI_2.0L and 3.0L_Vehicle List CY2019

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Diane –

for this year 2019 Testing 2.0L / 3.0L TDI we attached a vehicle list with identified vehicles regarding:

- 2.0L TDI (2x Gen.1, 2x Gen.2, 2x Gen.3)
- 3.0L TDI (2x Gen.1.1, 2x Gen.1.2, 2x Gen.2 PC, 2x Gen.2 SUV)

The attached overview of each generation was performed as last year 2018 vehicle list.

The list was ran by performed AEM's in a radius of 25 miles of the testing facility in CA. For 3.0L TDI Gen. 1.1 / Gen.1.2 we increased the radius to 100 miles, because of low volume.

Further we sorted the vehicles to the guidelines to the Categories listed in your email below.

Vehicles that were tested the last two calendar years are not included in this overview.

- 2.0L TDI Gen.2 shows vehicles with the AEM-C1 correction
- 2.0L TDI Gen.3 with the Phase 2 completion.
- 3.0L TDI all Generations vehicles within the top 10% per generation below 120,000 miles

The odometer reading indicates the mileage, when the AEM was performed and will be higher to date.

Out of these vehicle list for each Generation we will randomize.

Please review the list for approval.

After receiving the approval we will send the 30-day notice and start to contact the customer and complete the phone questionnaire.

We will send an timeline with the estimate testing dates as soon as we have received confirmation from the customer and testing lab.

Thanks,
Matthias

Matthias Rosenbaeck
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Manager, In-Use

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From: Kiyota, Diane@ARB [<mailto:diane.kiyota@arb.ca.gov>]

Sent: Tuesday, November 20, 2018 10:47 AM

To: MacCuish, Logan

Cc: Nakayama, Granta; Sauers, William; Judith Fiorentini

(Judith.Fiorentini@doj.ca.gov<<mailto:Judith.Fiorentini@doj.ca.gov>>); Jon Worm

(Jon.Worm@doj.ca.gov<<mailto:Jon.Worm@doj.ca.gov>>); Laurel Carnes

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(wehrly.linc@epa.gov<<mailto:wehrly.linc@epa.gov>>); Fuentes, Mark@ARB; Cicero-Fernandez, Pablo@ARB;

Adams, Lawson@ARB

Subject: VW - 2L and 3L In Use Testing

Logan,

Per Paragraph 6.1.2 of Appendix B of both the 2.0L & 3.0L Consent Decree, EPA/CARB reserve the right to specify to Defendants the test group, model, and mileage targets for the two vehicles to be tested per Generation, provided that EPA/CARB provide such specifications to Defendants by December 1 of the year preceding the year in which testing will be conducted. As such, EPA/CARB have the following requests for in-use compliance testing to be performed next year:

1. For the 2.0L Generations (i.e., (a) Generation 1, (b) Generation 2, and (c) Generation 3):

a. For Generations 1 and 3, Defendants shall select test groups that were not tested during the first enhanced in-use compliance campaign (performed by VW during 2018) from oldest Model Year to newest Model Year. In the case that all the test groups have been tested already, select models and model years that were not tested already from older to newest Model Year. If unable to meet this criteria, then Defendants shall submit an explanation of why the test group, model and model year has to be repeated in this year's program.

b. For Generation 2 (i.e., Volkswagen Passats 2012MY – 2014MY), Defendants shall procure two vehicles that have received the AEM Correction, AEM-C1, which improves the ECM software to address the P204F condition. In addition to the emission data required in Paragraph 6.1.4 (FTP, US06, SCO3, and HWFET),

Defendants shall perform: Ex. 7(E)

Ex. 7(E) to demonstrate that the efficacy of the fix in-use. Defendants shall provide a proposal for accomplishing this.

2. For the 3.0L Generations (i.e., (a) Generation 1.1, (b) Generation 1.2, (c) Generation 2 SUV, and (d) Generation 2 PC):

a. Unchanged from the previous campaign, Defendants shall select vehicles from the top 10% of mileage per generation below 120,000 miles.

Let me know if you have any questions.

Thanks,
Diane

King & Spalding Confidentiality Notice:

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